COHN LIFLAND PEARLMAN
HERRMANN & KNOPF LLP
JEFFREY W. HERRMANN
Park 80 West-Plaza One
250 Pehle Avenue, Suite 401
Saddle Brook, New Jersey 07663
201-845-9600
201-845-9423
jwh@njlawfirm.com

Attorneys for Plaintiffs
[Additional Counsel listed on signature page.]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

DAVID HECHT, individually and on behalf of others similarly situated, Plaintiff, vs. THE HERTZ CORPORATION, Defendant.	Civil Action Number: 16-1485 (WJM/MF) CLASS ACTION **FIRST AMENDED CLASS ACTION COMPLAINT** JURY DEMAND

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

PARTIES 1

JURISDICTION AND VENUE 2

FACTUAL ALLEGATIONS AS TO THE CLASS 3

Terms and Conditions for Use of Hertz Website 3

Terms and Conditions of Hertz' Gold Plus Rewards Program 6

Defendants' Violations of TCCWNA and Plaintiff's Injuries 7

HERTZ' PURPORTED ARBITRATION PROVISION AND CLASS ACTION WAIVER 10

CLASS ALLEGATIONS 13

COUNT I 16

COUNT II 17

COUNT III 18

PRAYER FOR RELIEF 19

JURY DEMAND 20

Plaintiff David Hecht, residing at 51 Hickory Lane, Closter, New Jersey, on behalf of himself and all others similarly situated (hereinafter "Plaintiff"), by and through his attorneys, Cohn Lifland Pearlman Herrmann & Knopf LLP ("Proposed Class Counsel"), alleges against The Hertz Corporation ("Hertz" or "Defendant") the following:

PRELIMINARY STATEMENT

1. Plaintiff brings this class action on behalf of himself and putative classes of New Jersey citizens (as defined herein, the "Classes") against Defendant. Plaintiff alleges that several provisions found on Hertz' consumer website – specifically, the terms and conditions governing the use of the website generally and the terms and conditions governing the enrollment and participation in Defendant's Gold Plus Rewards Program – violate the New Jersey Truth-in-Consumer Contract, Warranty and Notice Act, N.J.S.A. 56:12-14 to 18 ("TCCWNA"). Plaintiff alleges specifically that these terms and conditions violate TCCWNA by stating that certain provisions are or may be void, unenforceable or inapplicable in some jurisdictions without specifying which provisions are or are not void, unenforceable or inapplicable within the State of New Jersey. Plaintiff seeks TCCWNA's mandatory minimum $100 statutory civil penalty, actual damages or both, at his election, plus reasonable attorneys' fees and court costs, for himself and each similarly situated member of the Classes in connection with each violation of TCCWNA. In addition, Plaintiff seeks a declaratory judgment declaring Hertz' arbitration provision does not apply to this dispute because (a) that provision is inapplicable to members of Hertz' Gold Plus Rewards program, such as Plaintiff, and (b) the terms and conditions on Hertz' website requires that this dispute be brought either in this Court or in state court in Bergen County, New Jersey.

PARTIES

2. Plaintiff David Hecht is a natural person who at all times relevant to the allegations in this matter resided in Bergen County, New Jersey. Since more than six years preceding the filing of

the Complaint in this action, Plaintiff has been a member of the Hertz' Gold Plus Rewards Program. During this period, he has used Hertz' website to rent motor vehicles from Hertz for personal, family or household purposes.

3. For example, on June 25, 2015, after reserving a rental on Hertz' website while in the State of New Jersey, Plaintiff rented a car from Hertz. Again, on November 11, 2015, after reserving a rental on Hertz' website while in the State of New Jersey, Plaintiff rented a car from Hertz. Both of those rentals were for personal, family or household purposes.

4. Defendant Hertz is a corporation incorporated in the State of Delaware with its principal place of business located in Florida. Hertz is registered to do business in New Jersey. It is in the business of renting cars and other motor vehicles from approximately 10,090 corporate and franchise locations in approximately 145 countries.

5. Hertz maintains a website, www.hertz.com, on which it allows customers to reserve motor vehicles for rentals and, in some instances, prepay for those rentals.

6. Hertz conducts a program, called the Hertz Gold Plus Rewards program ("Gold Program"), that allows participants to bypass the rental counter entirely and proceed directly to their vehicles upon arrival at a Hertz facility.[1] Members of this program "are also eligible to earn Gold Plus Rewards points that may be redeemed for free rental days or converted to awards of other companies' loyalty programs."[2] Hertz states that "the Hertz Gold Plus Rewards program provides a significant competitive advantage to us, particularly among frequent travelers, and we have targeted such travelers for participation in the program."[3]

JURISDICTION AND VENUE

---

[1] Hertz 2015 Sec Form 10-K at 6.
[2] Hertz 2015 Sec Form 10-K at 6.
[3] Hertz 2015 Sec Form 10-K at 6.

7. This Court has jurisdiction over this class action pursuant to the Class Action Fairness Act, 28 U.S.C. §§ 1332(d)(2). The amount in controversy exceeds $5 million, exclusive of interest or costs; the proposed class includes at least 100 members, and there is minimal diversity of citizenship. The members of the Class are citizens of New Jersey. Hertz is a citizen of Delaware and Florida.

8. This Court has jurisdiction over Hertz because it is a corporation that regularly conducts business in this state with places of business in more than 50 New Jersey cities, and otherwise has sufficient minimum contacts with New Jersey to justify the exercise of jurisdiction.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

FACTUAL ALLEGATIONS AS TO THE CLASS

Terms and Conditions for Use of Hertz Website

10. Hertz allows consumers to use its website, www.hertz.com, to make reservations for rental of cars and other motor vehicles.

11. On a web page entitled, "THE HERTZ CORPORATION WEBSITE GENERAL TERMS AND CONDITIONS OF USE," ("Hertz' General Terms of Use") Hertz provides notice to consumers of terms and conditions to which they must agree in order to use Hertz' website and states that the terms and conditions constitute an "Agreement": "We offer this website, subject to the following terms and conditions ("Agreement"). Please read this Agreement carefully before using this website. By using this website, you accept the terms and conditions set forth in this Agreement."[4]

12. Hertz' General Terms of Use contains a New Jersey choice of law provision:

> "Except to the extent expressly provided in the following paragraph, this Agreement (including any of our policies referred to herein) shall be governed by and construed in accordance with the laws of the State of New Jersey in the United States without regard to New Jersey's conflict of law provisions."

[4] https://www.hertz.com/rentacar/navigation/templates/legalView.jsp (accessed Mar. 15, 2016).

13. Hertz' General Terms of Use also contains a forum selection clause providing for venue in New Jersey federal or state court: "If you are a citizen or resident of the United States, a U.S. commonwealth or a U.S. territory, or if you are accessing this website from the United States, you hereby agree that any disputes arising under or in connection with this Agreement, this website, and/or the Site Materials shall be submitted for resolution to either the U.S. District Court for the District of New Jersey located in the City of Newark in the State of New Jersey or a state court located in Bergen County in New Jersey, and you hereby waive any jurisdictional, venue, or inconvenient forum objections to such courts." "Site Materials" are defined therein as images, text, programs, and other materials found on Hertz' website.

14. Hertz' General Terms of Use also states: "Except as otherwise required by law, price, rate and availability of products or services are subject to change without notice." [5]

15. This statement is shown in the screenshot below with the above language highlighted:

> Verification of submitted data may be required prior to our acceptance of any reservation, purchase or order. Except as otherwise required by law or as otherwise expressly stated by us, price, rate, and availability of products or services are subject to change without notice. You acknowledge that reservations, purchases and services are subject to additional terms and conditions imposed by us or by our affiliates, licensees or associates.
>
> A summary of our current policies regarding vehicle rental rate quotes, reservations and prepaid rentals is accessible from the web page on which you are quoted a rate for rental by us.

16. Nowhere on this page does Hertz specify whether the provision that "price, rate and availability of products or services are subject to change without notice" is or is not applicable to reservations made using the Hertz website by New Jersey citizens or whether New Jersey is (or is not) one of the places where the law requires "otherwise."

[5] https://www.hertz.com/rentacar/navigation/templates/legalView.jsp (accessed Mar. 15, 2016).

17. Hertz' General Terms of Use also states: "**Void Where Prohibited**. Although this website is accessible worldwide, not all products or services discussed or referenced in this website are available to all persons or in all geographic locations or jurisdictions. In addition, restrictions may apply to use of products or services obtained in one jurisdiction in other jurisdictions. Those who choose to access this website do so on their own initiative and at their own risk, and are responsible for compliance with their local laws, if and to the extent such local laws are applicable." (emphasis in original).

18. This statement in shown in the screenshot below with the above language highlighted:

> **Void Where Prohibited.** Although this website is accessible worldwide, not all products or services discussed or referenced in this website are available to all persons or in all geographic locations or jurisdictions. In addition, restrictions may apply to use of products or services obtained in one jurisdiction in other jurisdictions. Those who choose to access this website do so on their own initiative and at their own risk, and are responsible for compliance with their local laws, if and to the extent such local laws are applicable. You may not use or export the Site Materials or products and services available through this website in violation of applicable export laws and regulations. We, and our affiliates, licensees, suppliers and agents, reserve the right to limit the availability of this website and/or the provision of any product or service to any person, geographic area or jurisdiction we or they so desire, at any time and in our or their sole discretion.

19. With respect to the statement in the above paragraph, "**Void Where Prohibited**," nowhere does Hertz say whether any provisions are or are not void in New Jersey because they are prohibited in New Jersey and, if so, which provisions those are.

20. With respect to the provision that "not all products or services discussed or referenced in this website are available to all persons or in all geographic locations or jurisdictions. In addition, restrictions may apply to use of products or services obtained in one jurisdiction in other jurisdictions": Nowhere on this page does Hertz specify whether that provision is or is not applicable

to reservations made using the Hertz website by New Jersey citizens or whether New Jersey is (or is not) one of the places where there are restrictions applicable to "use of products or services."

21. Hertz' General Terms of Use states that it was last updated on April 30, 2013.[6]

22. However, past versions of the same webpage containing provisions identical to those referenced above date back at least to June 1, 2011. Those past versions can be found at the Internet Wayback Machine website.[7]

23. Accordingly, those terms and conditions have been in place, at a minimum, for more than four years prior to the filing of this lawsuit.

Terms and Conditions of Hertz' Gold Plus Rewards Program

24. Hertz' www.hertz.com website also contains a set of "Gold Plus Rewards Terms and Conditions" on a webpage that provides notice to members of the Gold Plus Rewards Program of conditions to which they must agree in order to participate in the program ("Hertz' Gold Plus Terms").[8]

25. The webpage containing Hertz' Gold Plus Terms states, "Gold Plus Rewards offers are void where prohibited by law."[9]

26. The following screenshot shows the above statement as it appears on the Hertz website with the statement in question highlighted:

> Gold Plus Rewards offers are void where prohibited by law. Gold Plus Rewards Points will not be refunded in the event of no shows, early vehicle returns or reservation cancellation requests, unless the rental is cancelled with at least twenty-four hours prior notice to the

[6] https://www.hertz.com/rentacar/navigation/templates/legalView.jsp (accessed March 15, 2016).

[7] https://web.archive.org/web/20110930190430/https://www.hertz.com/rentacar/navigation/templates/legalView.jsp

[8] https://www.hertz.com/rentacar/emember/rewards-legal/loyalty-terms-conditions (accessed Mar. 15, 2016).

[9] *See* https://www.hertz.com/rentacar/emember/rewards-legal/loyalty-terms-conditions (accessed Mar. 15, 2016).

> rental pick up time shown on the reservation. Gold Plus Rewards Points, frequent traveler miles or points and Gold Plus Rewards Rentals are not exchangeable, refundable or redeemable for cash or credit under any circumstance. Tax liabilities arising from the Program are the sole responsibility of the member.

27. Nowhere on this web page does Hertz specify whether such offers are or are not void, unenforceable or inapplicable within the State of New Jersey or whether the State of New Jersey is or is not one of the locations where such offers are prohibited by law.

28. Past versions of this page date back to June 8, 2012. On that date, the page stated, as it does now, that Gold Plus Rewards offers are void where prohibited by law without specifying whether the State of New Jersey is or is not one of the places where such offers are void because they are prohibited by law. Those past versions can be found at the Internet Wayback Machine website.[10]

Defendants' Violations of TCCWNA and Plaintiff's Injuries

29. TCCWNA states, in relevant part in N.J.S.A. 56:12-16:

> No consumer contract, notice or sign shall state that any of its provisions is or may be void, unenforceable or inapplicable in some jurisdictions without specifying which provisions are or are not void, unenforceable or inapplicable within the State of New Jersey[.]

30. According to the New Jersey Supreme Court, this statute requires "that a contract or notice must clearly identify which provisions are void, inapplicable, or unenforceable in New Jersey. *Ibid.* In other words, a contract or notice cannot simply state in a general, nonparticularized fashion that some of the provisions of the contract or notice may be void, inapplicable, or unenforceable in some states." *Shelton v. Restaurant.com, Inc.*, 214 N.J. 419, 427-28, 70 A.3d 544, 549 (2013).

---

[10] https://web.archive.org/web/20120608080732/http://www.hertz.com/rentacar/emember/rewards-legal/loyalty-terms-conditions (accessed Mar. 15, 2016).

31. Hertz' terms and conditions described above violate that provision because they do no more that "state in a general, nonparticularized fashion that some of the provisions of the contract or notice may be void, inapplicable, or unenforceable in some states." *Id.*

32. For example, Hertz' web page entitled "THE HERTZ CORPORATION WEBSITE GENERAL TERMS AND CONDITIONS OF USE" provides notice to consumers of a set of terms and conditions that govern the use of its website and become part of an "Agreement" between Hertz and consumers who access the website, including consumers who use the website to make reservations for motor vehicle rentals.

33. This web page states, "Except as otherwise required by law …, price, rate and availability of products or services are subject to change without notice." That statement violates TCCWNA at N.J.S.A. 56:12-16 in that Hertz fails to specify whether New Jersey is one of the jurisdictions where an exception applies to the provision that "price, rate and availability of products or services are subject to change without notice," fails to specify whether that provision is or is not void, unenforceable, or inapplicable to reservations made by New Jersey citizens, and fails to specify whether the State of New Jersey is or is not one of the places where the law requires otherwise.

34. Hertz' web page entitled, "THE HERTZ CORPORATION WEBSITE GENERAL TERMS AND CONDITIONS OF USE" also states: "**Void Where Prohibited**. Although this website is accessible worldwide, not all products or services discussed or referenced in this website are available to all persons or in all geographic locations or jurisdictions." (emphasis in original).

35. The language referenced in the foregoing paragraph violates TCCWNA at N.J.S.A. 56:12-16 in that it states that the terms are or may be Void Where Prohibited" without specifying whether any provisions are void because they are prohibited within the State of New Jersey and if so, which ones; it also violates that statute in that it states that not all products or services discussed

or referenced on Hertz' website are available in all jurisdictions without specifying whether they are or are not available in New Jersey.

36. Hertz' web page entitled "Gold Plus Rewards Terms and Conditions," which states "Gold Plus Rewards offers are void where prohibited by law," violates TCCWNA at N.J.S.A. 56:12-16 in that it fails to specify which offers are or are not void, unenforceable or inapplicable within the State of New Jersey or whether the State of New Jersey is or is not one of the locations where any such offers are prohibited by law.

37. The purposes of the statutory prohibition that Hertz violated are (a) to ensure that agreements that merchants enter into with New Jersey citizens are complete in that they clearly specify which terms apply in New Jersey and (b) to ensure that New Jersey residents are clearly informed by merchants regarding "which provisions are void, inapplicable, or unenforceable in New Jersey."

38. Plaintiff sustained a concrete and particularized injury from the above violations because Hertz enrolled him in the Gold Program pursuant to a written agreement that was incomplete in that did not specify whether all of the terms applied or did not apply in New Jersey.

39. In addition, Plaintiff sustained a concrete and particularized injury from the above violations of TCCWNA because Hertz reserved cars for him and then rented those cars to him pursuant to a written agreement to use its website that was incomplete in that it did not specify whether certain terms were or were not applicable in New Jersey.

40. Plaintiff sustained additional concrete and particularized injuries from Hertz' violations of TCCWNA because he was kept in the dark regarding:

A. whether any or all Gold Plus Rewards offers are void because they are prohibited by law in Jew Jersey.

B. whether the price, rate and availability of Hertz' products or services shown on its website are subject to change without notice;

C. whether all products or services discussed or referenced on Hertz' website are available in New Jersey;

D. whether the terms set forth on Hertz' website are or may be void in New Jersey;

41. In N.J.S.A. 56:12-17, TCCWNA provides for liability of any person who violates the provisions of the act to the aggrieved consumer, such as Plaintiff and other members of the Classes. That liability consists of a penalty of not less than $100.00 or actual damages or both at the election of the consumer, together with reasonable attorney's fees and court costs.

HERTZ' PURPORTED ARBITRATION PROVISION AND CLASS ACTION WAIVER

42. Hertz purports to bind certain of its New Jersey customers to a so-called arbitration provision and class action waiver that is preprinted in a "rental agreement" provided to renters at the commencement of their rental. That provision purports to require that any dispute be resolved in an individual arbitration proceeding. However, this provision does not apply to members of Hertz' Gold Program, such as Plaintiff, because the preprinted general terms and conditions in the "Rental Agreement" received by Gold Program members at the commencement of the rental are excluded from the agreement governing the rental for such customers.

43. Hertz' Gold Program is a global expedited rental program. Hertz posts the Terms and Conditions of this program on its website at https://www.hertz.com/rentacar/emember/join/gold/displayTermsAndConditions.do (last accessed 5/19/2016). (A copy of this document is attached as Ex. A.) These Terms and Conditions do not contain an arbitration provision or a class action waiver. They do not mention arbitration or class actions.

44. A section of the Gold Program Terms and Conditions entitled, "Part I. Enrollment Agreement Terms," states:

> When You rent a private passenger motor vehicle, including all such vehicle's parts (a "Car"), using the Program (a "Program rental"), the Hertz company or licensee providing the Car is called the "Renting Company." At the time of such a rental, You will receive a written

> document (called a "Rental Record" or "Rental Agreement") which contains specific terms of that rental and identifies the Renting Company; the Rental Record/Agreement may also contain other information pertaining to Car rentals in the jurisdiction in which the rental commences. The agreement governing such a rental (this "Agreement") will consist of (i) Your Enrollment for the country in which that rental commences, (ii) these General Provisions and the terms and conditions of these Rental Terms which are applicable to rentals in that country, as modified by Hertz in the manner described in "Waiver Or Change Of Terms," below, (iii) the applicable Rental Record/Agreement (***excluding, in the case of a Rental Agreement, the preprinted general terms and conditions section thereof, if any***) and (iv) any other documents which You are required to sign when You rent the Car. This Agreement is an agreement between You, on the one hand, and the Renting Company, on the other. The words "Hertz," "we" and "us" mean the Enrolling Company and the Renting Company. This Agreement is entered into, and the rental of the Car using the Program commences, when You take possession of the Car.

Ex. A (emphasis added.)

45. On information and belief, the above paragraph was in effect beginning at least as early as July 15, 2015 That belief is based on a Declaration signed on May 4, 2016, by Paul A. Trujillo, an employee of Hertz, which Hertz submitted to this Court on May 5, 2016 and which can be found in the Docket of this case at Document 12-4 ("Trujillo Declaration"). Mr. Trujillo attached to his Declaration as Exhibit 4 a document that he called "a true and correct exemplar of the presently operative terms of the Gold Program, which became effective July 15, 2015." Trujillo Declaration. ¶ 9.

46. That version of the Gold Program Terms and Conditions contains, at page 52 of 98 of Doc. 12-4, the above-quoted paragraph excluding the preprinted terms of the "Rental Agreement" from the agreement governing the rental of motor vehicles by Gold Program rentals.

47. Moreover, the above paragraph has been in effect for Gold Program members during earlier periods as well, in fact since long before Hertz began including a purported arbitration provision in its so-called rental agreements in 2014. Part G of the Gold Program Terms and

Conditions lists changes made since January 1, 2006. The only such changes apply only to Australia and New Zealand. Ex. A.

48. In addition, the internet archive on the website of the "Internet Wayback Machine" contains the Gold Program Terms and Conditions as of December 3, 2012.[11] As quoted below, that version of the Gold Program Terms and Conditions contained the same exclusion as in the later version quoted above:

> When You rent a private passenger motor vehicle (excluding trucks and vans), including all such vehicles' parts (a "Car"), using the Program, the Hertz company or licensee providing the Car is called the "Renting Company". Your Enrollment, together with the terms and conditions of the Rental Terms which are applicable to rentals in the country in which the rental commences (as modified by the Enrolling Company from time to time in the manner prescribed therein), the Rental Record or Rental Agreement which You receive at the commencement of the rental (***excluding, in the case of a rental agreement, the preprinted general terms and conditions section thereof, if any***), and any other documents which You are required to sign at the commencement of the rental, will constitute the agreement between You and the Renting Company governing the rental. The identity of the Renting Company for each rental will appear on the Rental Record/Agreement for that rental. The Enrolling Company and the Renting Company are referred to collectively as "Hertz", "we" or "us".

49. Accordingly, there is no arbitration provision or class action waiver applicable to any rentals by Gold Program members in New Jersey during the applicable period of limitations.

50. In addition, as stated above, Hertz' General Terms of Use requires that any dispute arising under or in connection with that "Agreement," Hertz' website or the Site Materials be submitted, not to arbitration, but to this Court or to a state court located in Bergen County, New Jersey. As a result, this Court is the proper forum for resolution of this dispute.

---

11 https://web.archive.org/web/20121203213700/https://www.hertz.com/rentacar/emember/join/gold/displayTermsAndConditions.do (accessed 5/19/2016).

CLASS ALLEGATIONS

51. This action is brought and may properly proceed as a class action, pursuant to Fed. R. Civ. P. 23(a) and (b)(3).

52. Plaintiff seeks certification of two Classes, initially defined as follows:

> **Hertz Gold Plus Rewards Program Class.** All citizens of the State of New Jersey who were members of the Hertz Gold Plus Rewards Program for personal, family, or household purposes at any time either (a) between the date six years prior to the date of the filing of the Complaint in this case and June 8, 2012, at a time when the Gold Plus Rewards Terms and Conditions contained language stating, in words or substance, that Gold Plus Rewards offers are void where prohibited by law, without specifying which provisions are or are not void, unenforceable or inapplicable within the State of New Jersey, (b) on or after June 8, 2012, or (c) both.

> **Hertz Renters Class.** All citizens of the State of New Jersey who, at any time either (a) between the date six years prior to the date of the filing of this Complaint and June 1, 2011, at a time when Hertz' General Terms of Use webpage contained language stating, in words or substance, that except as otherwise required by law, price, rate and availability of products or services are subject to change without notice and that the Hertz' General Terms of Use are void where prohibited, without specifying whether these provisions are void, unenforceable, or inapplicable within the State of New Jersey, (b) on or after June 1, 2011, or (c) both, rented a motor vehicle from Hertz for personal, family, or household purposes after using Hertz' website to reserve that motor vehicle.

53. The members of the Classes for whose benefit this action is brought are so numerous that joinder of all members is impracticable.

54. There are questions of law and fact common to the members of the Classes. These common questions include, but are not limited to:

a) Does Hertz' Gold Plus Rewards Reward Terms and Conditions include the following: "Gold Plus Rewards offers are void where prohibited by law"?

b) Does Hertz specify whether the Gold Plus Rewards offers are or are not void, unenforceable or inapplicable within the State of New Jersey?

c) Does "THE HERTZ CORPORATION WEBSITE GENERAL TERMS AND CONDITIONS OF USE" state: "Except as otherwise required by law …, price, rate and availability of products or services are subject to change without notice?"

d) Does Hertz specify whether the provision that price, rate and availability of products or services are subject to change without notice is or is not applicable within the State of New Jersey?

e) Does "THE HERTZ CORPORATION WEBSITE GENERAL TERMS AND CONDITIONS OF USE" state: "**Void Where Prohibited**. Although this website is accessible worldwide, not all products or services discussed or referenced in this website are available to all persons or in all geographic locations or jurisdictions. In addition, restrictions may apply to use of products or services obtained in one jurisdiction in other jurisdictions. Those who choose to access this website do so on their own initiative and at their own risk, and are responsible for compliance with their local laws, if and to the extent such local laws are applicable."? (emphasis in original).

f) Does Hertz specify whether the terms referenced in the "Void Where Prohibited" section referenced above are or are not void, unenforceable, or inapplicable within the State of New Jersey?

g) Are New Jersey residents injured by the above violations because Hertz enrolled them in the Gold Program pursuant to an agreement that did not specify whether certain terms applied or did not apply in New Jersey and rented cars to them pursuant to an agreement to use its website that did not specify whether certain terms were or were not applicable in New Jersey?

h) Whether the preprinted general terms and conditions section of the rental agreement received by Gold Program members are part of the rental agreement between the renter and the renting company.

i) Whether New Jeresey residents are injured by the above violations because they are kept in the dark as to whether these provisions apply in New Jersey,

j) Whether Plaintiff and those similarly situated are entitled to statutory damages of not less than $100 for each violation of TCCWNA.

55. Plaintiff asserts claims that are typical of the claims of the members of the Classes he seeks to represent, because all such claims arise out of the same, or similar, notices or contracts used by Defendant in its transactions with Plaintiffs.

56. Plaintiff will fairly and adequately protect the interests of the Classes.

57. Plaintiff does not have any interests which are incompatible or contrary to those of the Classes.

58. The questions of law or fact common to the Class members, as detailed above, predominate over any questions affecting only individual members.

59. A class action is superior to other available methods for the fair and efficient adjudication of the claims of Plaintiffs and the putative Classes.

60. Specifically, the Classes are too numerous for individual actions and the economic damages, statutorily required for Plaintiff and the putative Class members, are too small to warrant individual actions when compared to the expense and burden of individual litigation.

61. A class action for these claims will provide an orderly and expeditious process for the Class members, and will serve to conserve judicial resources as well as time and expenses for the Class members.

62. The members of the Classes are readily identifiable from the records of Defendant.

63. Plaintiff has retained competent counsel who is experienced in the prosecution of consumer class action litigation. The proposed Class Counsel will fairly and adequately represent the interests of the Class. Proposed Class Counsel has identified and investigated the potential claims in this action. Proposed Class Counsel has extensive experience in handling class actions, other complex litigation, and consumer claims of the type asserted in the instant action. Proposed Class Counsel has knowledge of the applicable law for this action and will commit the necessary resources to representing this Class.

COUNT I
(Terms and Conditions of Hertz' Gold Plus Rewards Program)

64. Plaintiff, on behalf of himself and the Hertz Gold Plus Rewards Program Class re-asserts and incorporates by reference each and every allegation set forth in the preceding paragraphs as though stated in full herein.

65. Plaintiff and the members of the Hertz Gold Plus Rewards Program Class are "consumers" within the meaning of TCCWNA.

66. Hertz' web page entitled "Gold Plus Rewards Reward Terms and Conditions" is a consumer contract, notice, or sign within the meaning of TCCWNA, as set forth at N.J.S.A. 56:12-15 and -16.

67. TCCWNA states, in relevant part:

> No consumer contract, notice or sign shall state that any of its provisions is or may be void, unenforceable or inapplicable in some jurisdictions without specifying which provisions are or are not void, unenforceable or inapplicable within the State of New Jersey[.]

N.J.S.A. 56:12-16.

68. Hertz' web page entitled "Gold Plus Rewards Reward Terms and Conditions," which states "Gold Plus Rewards offers are void where prohibited by law," violates TCCWNA at N.J.S.A. 56:12-16 in that it fails to specify which offers are or are not void, unenforceable or inapplicable within the State of New Jersey or whether the State of New Jersey is or is not one of the locations where such offers are prohibited by law.

69. Pursuant to N.J.S.A. 56:12-17, and as a result of Defendant's violations of TCCWNA, Hertz is liable to Plaintiff, and each Class member for a civil penalty of not less than $100 or actual damages or both, at the election of Plaintiff and the applicable Class Member, for each such violation, together with reasonable attorney's fees and court costs.

COUNT II
(Terms and Conditions for Use of Hertz' Website)

70. Plaintiff, on behalf of himself and the Hertz Renters Class, re-asserts and incorporates by reference each and every allegation set forth in the preceding paragraphs as though stated in full herein.

71. Plaintiff and the members of the Hertz Renters Class are "consumers" within the meaning of TCCWNA.

72. Hertz' web page entitled, "THE HERTZ CORPORATION WEBSITE GENERAL TERMS AND CONDITIONS OF USE," is a consumer contract, notice, or sign within the meaning of TCCWNA.

73. TCCWNA states, in relevant part:

> No consumer contract, notice or sign shall state that any of its provisions is or may be void, unenforceable or inapplicable in some jurisdictions without specifying which provisions are or are not void, unenforceable or inapplicable within the State of New Jersey[.]

N.J.S.A. 56:12-16.

74. Hertz' web page entitled, "THE HERTZ CORPORATION WEBSITE GENERAL TERMS AND CONDITIONS OF USE," provides notice to consumers of a set of terms and conditions that govern the use of its website and become part of an "Agreement" between Hertz and consumers who access the website, including consumers who use the website to make reservations for motor vehicle rentals.

75. This web page, which states, "Except as otherwise required by law …, price, rate and availability of products or services are subject to change without notice," violates TCCWNA at N.J.S.A. 56:12-16 in that it fails to specify whether the provision that "price, rate and availability of products or services are subject to change without notice" is or is not void, unenforceable, or

inapplicable to reservations made by New Jersey citizens and fails to specify whether the State of New Jersey is or is not one of the places where the law requires otherwise.

76. Hertz' web page entitled, "THE HERTZ CORPORATION WEBSITE GENERAL TERMS AND CONDITIONS OF USE," also states: "**Void Where Prohibited**. Although this website is accessible worldwide, not all products or services discussed or referenced in this website are available to all persons or in all geographic locations or jurisdictions." (emphasis in original).

77. The language referenced in the foregoing paragraph violates TCCWNA at N.J.S.A. 56:12-16 in that it states "**Void Where Prohibited**" without specifying whether any of the provisions are or are not void, unenforceable or inapplicable within the State of New Jersey.

78. That language violates TCCWNA for the additional reason that it states that "not all products or services discussed or referenced in this website are available to all persons or in all geographic locations or jurisdictions" without specifying whether they are available within the State of New Jersey.

79. Pursuant to N.J.S.A. 56:12-17, and as a result of Defendant's violations of TCCWNA, Hertz is liable to Plaintiff, and each Class member, for a civil penalty of not less than $100 or actual damages or both, at the election of Plaintiff and the applicable Class Member, for each such violation, together with reasonable attorney's fees and court costs.

COUNT III
(Declaratory Relief Regarding Defendants' Arbitration Provision)

80. Plaintiff, on behalf of himself and the Classes, re-asserts and incorporates by reference each and every allegation set forth in the preceding paragraphs as though stated in full herein.

81. As set forth above, Defendant presents to customers, at the time they pick up their cars, a document that purports to be a rental agreement with an arbitration provision that requires that any

dispute be decided in an individual arbitration and that purports to waive the right to bring a civil lawsuit and a class action.

82. This arbitration provision is excluded from agreements to rent motor vehicles to members of the Hertz Gold Program.

83. Moreover, the "THE HERTZ CORPORATION WEBSITE GENERAL TERMS AND CONDITIONS OF USE" requires that any disputes arising under or in connection with Hertz' website, such as the dispute alleged in this Amended Complaint, shall be submitted for resolution to either the U.S. District Court for the District of New Jersey located in the City of Newark in the State of New Jersey or a state court located in Bergen County, New Jersey.

84. Nevertheless, in this lawsuit Hertz filed a motion to dismiss on the purported ground that Plaintiff's complaint is subject to its arbitration provision. There thus exists a controversy as to whether the arbitration provision applies to this dispute.

85. Accordingly, Plaintiff, on behalf of himself and the Classes respectfully requests that the Court enter a Declaratory Judgment that Hertz' purported arbitration provision does not apply to this dispute.

PRAYER FOR RELIEF

Plaintiff, on behalf of himself and all others similarly situated, demands judgment against Defendant as follows:

a. Certifying this matter as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(3);

b. Appointing Plaintiff as Class Representative;

c. Appointing Plaintiff's attorneys, the Proposed Class Counsel, as Class Counsel;

d. Awarding Plaintiff and the Class members the statutory civil penalties or actual damages or both, at the election of Plaintiff and the Class Members, pursuant to N.J.S.A. 56:12-17 after trial of this action;

e. Awarding reasonable attorneys' fees and court costs pursuant to N.J.S.A. 56:12-17;

f. A declaratory judgment declaring that this dispute is not subject to arbitration.

g. Such other relief as the Court deems equitable and just.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted,

COHN LIFLAND PEARLMAN
HERRMANN & KNOPF LLP

Dated: May 23, 2016

By: */s/ Jeffrey W. Herrmann*
Jeffrey W. Herrmann, Esq.
Park 80 West-Plaza One
250 Pehle Ave., Suite 401
Saddle Brook, NJ 07663
(201) 845-9600
(201) 845-9423 (Fax)
jwh@njlawfirm.com

LAW OFFICE OF RICHARD S. CORNFELD

Richard S. Cornfeld
1010 Market Street, Suite 1720
St. Louis, MO 63101
(314) 241-5799
(314) 241-5788 (fax)
rcornfeld@cornfeldlegal.com

and

THE BRUNING LAW FIRM, LLC.

Anthony S. Bruning
Anthony S. Bruning, Jr.
Ryan L. Bruning
555 Washington Avenue, Suite 600
St. Louis, MO 63101
(314) 735-8100
(314) 735-8020 (Fax)

tony@bruninglegal.com
aj@bruninglegal.com
ryan@bruninglegal.com

Attorneys for Plaintiffs